

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	)	
	)	
v.	)	02: 04cr0050
	)	
ALEXIS McINTYRE	)	

**ORDER OF COURT**

Presently pending before the Court is the MOTION TO AMEND JUDGMENT ORDER OF ALEXIS MCINTYRE filed *pro se* by Alexis McIntyre, and the response in opposition filed by the government. For the reasons that follow, the Motion will be denied.

On July 14, 2004, Defendant Alexis McIntyre pleaded guilty to both counts of a two-count indictment which charged him with Conspiracy to Commit Offenses Against the United States on or about August 1, 2003, to February 2, 2004, in violation of Title 18, United States Code, § 371 (Count I), and Bank Robbery, which occurred on August 30, 2003, in violation of Title 18, United States Code, § 2113(a) (Count II).

At the time he was arrested on these federal charges, Defendant was serving a state court sentence of 11-1/2 to 23 months, which had been imposed on December 16, 2003. That sentence was a result of Defendant having pled guilty to Possession With Intent to Deliver Controlled Substance, Possession of Controlled Substance, and Possession or Distribution of a Small Amount of Marijuana in the Allegheny County Court of Common Pleas, Criminal Division, Pittsburgh, Pennsylvania.

On February 25, 2005, this Court sentenced Defendant on his federal charges to a term of imprisonment of 63 months, which sentence consisted of 60 months at Count 1 and 63 months at Count 2, to be served concurrently. At the time of sentencing, the Court also noted

that the federal sentence was to be served concurrently with the state court sentence the Defendant was currently serving.<sup>1</sup> Defendant's state court sentence is now fully discharged. See Govt's Response at ¶ 5.

On March 7, 2005, Defendant filed a Notice of Appeal, which appeal remains pending before the Court of Appeals for the Third Circuit.

Defendant has filed the instant motion in which he asks the Court for an order *nunc pro tunc* clarifying the Judgment Order. In essence, Defendant argues that the Judgment is ambiguous because it does not indicate whether the "concurrent" term was to be retroactively or prospectively concurrent.

There are few circumstances in which a district court may continue to exercise authority over a case after the filing of a notice of appeal, an "event of jurisdictional significance [that] confers jurisdiction on the court of appeals and divests the district court of its control over . . . the case." *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58-59 (1982). A district court may proceed if the appeal is patently frivolous, if the notice of appeal relates to a non-appealable order or judgment, or if the appeal is taken in bad faith and would result in unwarranted delay. See *United States v. Leppo*, 634 F.2d 101 (3d Cir. 1980) (patently frivolous); *Mondrow v. Fountain House*, 867 F.2d 798 (3d Cir. 1989) (non-appealable order or judgment); and *Mary Ann Pensiero, Inc. v. Lingle*, 847 F.2d 90 (3d Cir. 1988) (bad faith).

The Notice of Appeal in this case clearly relates to an appealable order or judgment;

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<sup>1</sup> On March 8, 2005, the government filed a Motion Pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure. Defendant was resentenced on May 2, 2005, and his sentence was reduced to 51 months imprisonment, which sentence consisted of 48 months at Count 1 and 51 months at Count 2, to be served concurrently.

specifically, the Judgment Order issued by the Court on February 25, 2005. *See* Notice of Appeal, filed March 7, 2005 (Document No. 81). Accordingly, the Court finds and rules that its jurisdiction has been divested by virtue of the of the Notice of Appeal filed by Defendant.

AND NOW, this 15th day of May, 2006, it is hereby **ORDERED, ADJUDGED AND DECREED** that this Court does not have the jurisdiction to decide the pending MOTION TO AMEND JUDGMENT ORDER OF ALEXIS MCINTYRE filed *pro se* by Alexis McIntyre and, thus, same is **DENIED**.

BY THE COURT:

s/Terrence F. McVerry  
United States District Court Judge

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